SECRET

OGC 74-1483

Executive Registry
74-5424/1

22 August 1974

BRIEFING NOTE FOR THE DIRECTOR

SUBJECT: Briefing of Assistant Secretary of Defense (Comptroller) Terence E. McClary on Air America Renegotiation Problem

1. I briefed Mr. McClary yesterday in preparation for his participation later in the morning in the meeting with Chairman Whitehead of the Renegotiation Board with Deputy Secretary of Defense William P. Clements, Jr. Whitehead had requested the meeting.

2. Upon learning that Air America (AA) is wholly owned by CIA and that the proceeds of its imminent dissolution will accrue to the benefit of the Treasury, he agreed that the renegotiation is a useless and wasteful exercise. Because much of the work and reporting by AA has already been done, we discussed the possibility that Whitehead might tell Clements that the Board will accept a settlement of $2 million without hearings and that this would be a suitable and preferable way for that part of the company's assets to be returned to the Treasury. McClary accepted our position that any additional work is undesirable, especially in that the Board's report of the settlement could raise questions in Congress and result in publicity. While Defense cannot force Whitehead to follow its recommendations, McClary knows that Whitehead is virtually powerless since he must rely on the Department of Justice for enforcement and they are unwilling to act.

3. As a matter of interest, it has been reported that Mr. Whitehead has tendered his resignation under pressure from Senator Proxmire, but the General Counsel of the Board advised me on Monday that he was now not certain the resignation would take place. Whitehead has been criticized severely by Proxmire for his handling of the renegotiation of McDonnell Douglas contracts and for an order he apparently gave to his General Counsel not to permit a newly appointed member of the Board to have access to the Board's McDonnell Douglas files.

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[redacted]

Acting General Counsel

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E-2 IMPDET

[redacted]

OGC 74-0674

17 April 1974

BRIEFING NOTE FOR THE DIRECTOR

SUBJECT: The Renegotiation Board - Air America

1. Some months ago The Renegotiation Board contacted Air America, requesting that Air America file appropriate statistics with the Board for the years 1967 through 1973. The Board is aware of Air America's ownership, and prior to 1967 it routinely granted Air America exemptions from the filing and renegotiation process, which were fully authorized under applicable law.

2. We contacted the Board after it approached Air America last year, and we argued, in writing on a classified basis, for an exemption on the basis that Air America was Government owned and that renegotiation procedures ultimately served no useful purpose. The Board did not agree, pointing out it believed that under the law it was required to look into the matter and to develop a proper record. Thus, it required Air America to comply with filing requirements. We had hoped that once the Board examined the figures it would make a determination that it need go no further.

3. On April 4, 1974, however, the Board forwarded a report to Air America, advising it that the profits subject to renegotiation for the years 1967 through 1973 totaled $14,400,000. Clearly, the Board intends to go forward with renegotiation

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procedures, but at this time we are unable to even guess at the amounts it might claim should be returned to the Treasury. The procedures will be time consuming and will require considerable effort by Air America employees who are otherwise fully seized with the problem of winding down the airline's affairs, including matters involving Air Asia, which we are trying to sell as a separate entity. Also, employees of the Board will expend considerable time and effort in the procedures.

4. Looking at the over-all picture, it appears that no useful purpose is served by these procedures, since ultimately the U. S. Government is the recipient of all funds. Further, the situation in 1967 through 1973 did not differ from that in earlier years when the Board granted exemptions. On the other hand, the Board feels that in the atmosphere in Washington today it wants a full record that it has acted properly under law.

5. Hopefully, Mr. Ash might agree with our position. Furthermore, there is a distinct possibility that the $20,000,000 from Air America which is intended as an offset in our appropriation will not be fully available if the procedures are carried out. 25X

[redacted]

JOHN S. WARNER
General Counsel

DCI/DDCI

Routing Slip

TO:

		ACTION	INFO.			ACTION	INFO.
1	DCI			11	LC		
2	DDCI			12	IG		
3	S/MC			13	Compt		
4	DDS&T			14	Asst/DCI		
5	DDI			15	AO/DCI		
6	DDM&S			16	Ex/Sec		
7	DDO			17	FILE:		
8	D/DCI/IC			18	Renegotiation Board		
9	D/DCI/NIO			19			
10	GC	✓		20			

JKG /s/

SUSPENSE _____
Date

Remarks:

Done —

He agreed

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DCI/DDCI

8/23/74

SENDER WILL CHECK CLASSIFICATION TOP AND BOTTOM					
	UNCLASSIFIED		CONFIDENTIAL		SECRET

OFFICIAL ROUTING SLIP

TO	NAME AND ADDRESS	DATE	INITIALS
1	The Director		
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	ACTION		DIRECT REPLY		PREPARE REPLY
	APPROVAL		DISPATCH		RECOMMENDATION
	COMMENT		FILE		RETURN
	CONCURRENCE		INFORMATION		SIGNATURE

Remarks:

The briefing note on my meeting with Assistant Secretary McClary for your use with Deputy Secretary Clements. Also attached as background is John Warner's briefing note of 17 April which pretty well summarizes our dealings with the Board.

cc: DDCI

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FROM: NAME, ADDRESS AND PHONE NO.	DATE
Acting General Counsel	8/22/74

prior to the initiation of the programs.

As for the future of the EVS program, Butterfield said the existing leased system can handle present needs but an EVS-type capability will be required for the upgraded third-generation air traffic control system.

He indicated FAA plans to discuss with Bell System officials the current prospects of obtaining EVS-type capabilities from that company, as a possible alternative to launching a new program to develop agency-owned equipment.

The FAA's decision to procure its own EVS was based on an analysis that indicated the agency could expect to save $30 million annually by 1994, compared to leasing Bell System hardware.

The savings could be significantly larger if the EVS system were designed to make maximum possible use of leased long-distance trunk lines, according to one FAA engineer. This would involve continuous monitoring of trunk lines and automatic switching to utilize temporarily lightly loaded lines.

A memorandum that was issued June 21 by the White House Office of Telecommunications Policy will influence any future FAA decision on whether to relaunch a new EVS program or to lease from the Bell System.

That memorandum said government agencies should lease commercial service unless it is not available when needed, is not adequate technically or operationally, or is "significantly more costly," Butterfield said at the hearing.

The document said that for agency-owned and operated service to qualify as "significantly less costly," the "savings must exceed 10% of the cost of commercial service and the cost estimate of the non-commercial approach must include all of the factors specified in OMB circular A-76," Butterfield said.

The FAA administrator added that "we are not sure what the savings would be. That is something we have to investigate. But we consider EVS an important element of the upgraded third generation air traffic control system."

Chairman of Renegotiation Board Resigns in Clash With Congress

By Katherine Johnsen

Washington—Clash between Sen. William Proxmire (D.-Wis.) and Chairman William S. Whitehead of the five-member Renegotiation Board over the settlement of McDonnell Douglas Corp.'s excess profits case covering 1967-69 for $5 million culminated last week in Whitehead's resignation.

A dissent to the board's 4-to-1 majority opinion maintained that the excess profits determination against McDonnell Douglas should have been more than $30 million. The dissent by board member Goodwin Chase was supported by Sen. Proxmire.

The highlight of a confrontation between Sen. Proxmire and Whitehead over the McDonnell Douglas case was the disclosure that Whitehead had threatened to have the board's general counsel, David M. F. Lambert, fired for spending too much time in supplying Chase with legal guidance. The confrontation occurred at a July 25 hearing before the Appropriations subcommittee headed by Sen. Proxmire.

Last week, Sen. Proxmire, who had recommended Whitehead's removal, announced the board chairman's resignation had been "requested and accepted" by the White House.

The White House version was that Whitehead had submitted his resignation, and its acceptance by President Ford was a technicality. Board members serve at the pleasure of the President, rather than for fixed terms. The White House also directed board member Norman B. Houston to serve as acting chairman.

During the period of board contention over the McDonnell Douglas case, Houston pursued a middle road between Whitehead and Chase. But he ultimately accepted the position of the majority.

Chase and Houston are the two new members of the board, appointed in October, 1973. Chase is former president of Pacific National Bank of Washington, Ellensburg, Wash. Houston is former deputy assistant secretary for administration of the Health, Education and Welfare Dept. Whitehead and board members Rex M. Mattingly and D. Eldred Rinehart were appointed in 1969.

Calling Whitehead's removal "welcome news," Sen. Proxmire said the July 25 hearing on the McDonnell Douglas case "demonstrated beyond question the incompetency of Chairman Whitehead."

Sen. Proxmire added that "due to the board's recent leadership, defense contractors have been allowed to keep tens of millions of dollars in excess profits which should have been recovered for the taxpayer."

The key issue in the McDonnell Douglas case was whether its profits should be averaged out for the corporation as a whole or considered separately on a product-line or divisional basis.

Majority View

Under Whitehead's leadership, the majority took the first approach, and member Chase the alternative approach.

Specifically, the majority determined $5 million in excess profits for 1967 and no excess profits for 1968 and 1969.

Chase's dissent said the excessive profits amounted to $15 million for 1967, $16 million for 1968 and that there was not sufficient information to make a finding for 1969. Chase estimated that segments of the corporation that previously were Douglas Aircraft Co. had a profit of 5% of sales, and the segments that previously were McDonnell Corp., 9% of sales. McDonnell and Douglas merged in mid-1967. At that time McDonnell was in a profit position and Douglas in a loss position.

But profits-on-sales is only one factor considered by the Renegotiation Board in making its annual determinations of the excessive profits of contractors on government business. Other factors include

Dynalectron Protest Response Due Next Month

Washington—National Aeronautics and Space Administration will respond in about mid-September to Dynalectron Corp.'s protest over the award of a contract worth potentially $40-50 million to Lockheed Electronics Co. for operation of the Johnson Space Center-White Sands Test Facility (AW&ST July 29, p. 21).

The protest centers on overall contract costs that Dynalectron believes would be substantially lower if it were awarded the contract.

"NASA has stated that after [contract cost] normalization procedures the cost differentials between Dynalectron and Lockheed were not 'substantial' and that, accordingly, the source selection official made a decision solely on the basis of mission suitability scores," Dynalectron said.

A comparison of manning and staffing approaches between the two competitors indicates "Lockheed's proposed approach will result in an additional cost to the government [of] millions of dollars over the anticipated program period," Dynalectron said.

Dynalectron received a number of "good" ratings on mission suitability criteria and consistently was ranked second to Lockheed in this area during the competition, according to Dynalectron.

"In view of the fact that NASA has officially rated Dynalectron's performance on its current contract as 'excellent,' it is most difficult to accept NASA's failure to accord Dynalectron's management team an overall rating of excellent," Dynalectron said.

profits on capital investment, risk assumed by the contractor, contractor performance and contribution to the defense effort.

At Senate subcommittee hearings, Whitehead said the board does make an evaluation to determine the degree of difference in a contractor's products. If there is sufficient dissimilarity, the renegotiation law is applied separately by products or by divisions.

Question of Similarity

But in the case of McDonnell Douglas, Whitehead said, "The board did not believe the products to be sufficiently dissimilar to yield substantially different results for renegotiation purposes and it did not seek out, and evaluate separately, the financial and operating data on the Douglas and McDonnell divisions."

Challenging Whitehead's position that the products of McDonnell Douglas for 1967-69 are similar, Chase told the subcommittee that "the F-4 Phantom jet is completely unlike the Saturn stage or launch support services or the manned orbital laboratory."

Chase also protested that the board did not develop cost details in arriving at the $5 million determination.

"If you want to know the reasonableness of a profit, you have to know the reasonableness of the cost," John B. Davis, Chase's assistant, told the subcommittee. "There does not appear in the record the details of the cost in order to establish the reasonableness of profit."

Chase complained to the subcommittee that he was told by Whitehead "not to go and visit with any member of the staff, general counsel, or any department head, and that left me entirely alone with my assistant to perform functions."

Whitehead responded that "this man used an inordinate amount of the staff's time for every nit-picking subject there was that came up."

Chase said: "If the chairman is going to take the position that . . . a defense contractor in the U. S. with more than $1.6 billion in contracts in one year, is nit-picking, then I have lost my faith in the renegotiation process."

General counsel Lambert told the subcommittee that during the period Chase was writing his dissent he was told by Whitehead "to stop giving legal assistance to Mr. Chase personally."

Asked by Sen. Proxmire whether Whitehead threatened to fire him if he did not stop, Lambert said: "He said that action would take place."

In addition to being general counsel, Lambert was also the attorney assigned to the McDonnell Douglas case.

Sen. Proxmire expects to pursue the McDonnell Douglas case and the renegotiation issues it has raised, including the personnel situation at the board, following the Aug. 23 to Sept. 4 Labor Day recess.

Air Combat Fighter Radar Proposals Sought by USAF

Los Angeles—Air Force is seeking proposals from avionics companies by Sept. 13 for development and flight test demonstration of an airborne search and fire control radar for the projected air combat fighter (AW&ST Aug. 5, p. 12).

The radar will be oriented primarily toward the air-to-air roles envisioned for the Air Force air combat fighter (ACF), but will have growth provisions to handle additional air-to-air and air-to-ground roles of greater interest to prospective foreign users of the new aircraft.

Air Force deputy for prototypes at Aeronautical Systems Div. plans to pick two contractors for the flight test demonstration phase of the radar development, to be conducted on a tight timetable. Evaluation of proposals is scheduled to be completed by mid-October and contract awards made by Nov. 1. Flight tests, to get under way by the fall of 1975, could lead to selection of one company for full-scale radar production in a manner similar to earlier choices of radar suppliers for the McDonnell Douglas F-15 and Boeing airborne warning and control system (AWACS) aircraft.

Both Northrop and General Dynamics, USAF's two lightweight fighter competitors, will provide some assistance to the Air Force in choosing the two radar contractors. Whichever company is picked to build the ACF early next year will participate in the evaluation of the two competitive systems and will have a choice in any final contractor selection.

Basically, the Air Force wants a small radar weighing a maximum of 220 lb. with a 200-lb. goal considered more desirable. The radar will be optimized for dogfighting roles with a capability for automatic off boresight target acquisition from 500 ft. to 5 mi. The sensor is to have planned growth to ground-map capability as well as the ability to provide radar guidance to an air-to-air missile like the Raytheon Sparrow.

The radar has to be compatible with both the General Dynamics YF-16 and Northrop YF-17 contenders for the ACF program, even though the volumetric envelopes available for containing the radars will necessitate different physical configurations for the two aircraft.

Nine avionics companies have been asked to submit proposals in the radar competition and at least five are expected to do so. These include the three companies that for over two years have been investigating suitable radars under internal funding for the Northrop P-530—Hughes Aircraft, Missile Systems Div. of Rockwell International, and Westinghouse.

Two other likely bidders are the Norden Div. of United Aircraft and Emerson Electric.

ERTS-1 Limited to Realtime Coverage

Washington—Earth Resources Technology Satellite (ERTS-1) is now providing only realtime imagery following further degradation of the spacecraft's tape recorder.

Worldwide coverage by the spacecraft is no longer possible, but continuous U. S. coverage is being maintained through ground stations in Canada, Alaska, California and Maryland, according to Thomas W. Winchester of General Electric, manager of the ERTS operations control center at the Goddard Space Flight Center. Additional coverage is being provided through the Brazilian ground station.

Starting about March, 1973, the spacecraft's tape recorder began giving GE and National Aeronautics and Space Administration ground controllers problems. Since then the unit had been used sparingly, to record selected areas such as drought-stricken portions of Africa and to help fulfill a goal to obtain cloud-free images of all land areas on earth.

"Our 'filling-in-the-world' requirement is now gone," Winchester said, but the spacecraft continues to perform well in realtime coverage of the U. S.

Problems in the tape recorder are believed to involve contamination on portions of the tape or tape head. The unit's drive assembly continues to work well.

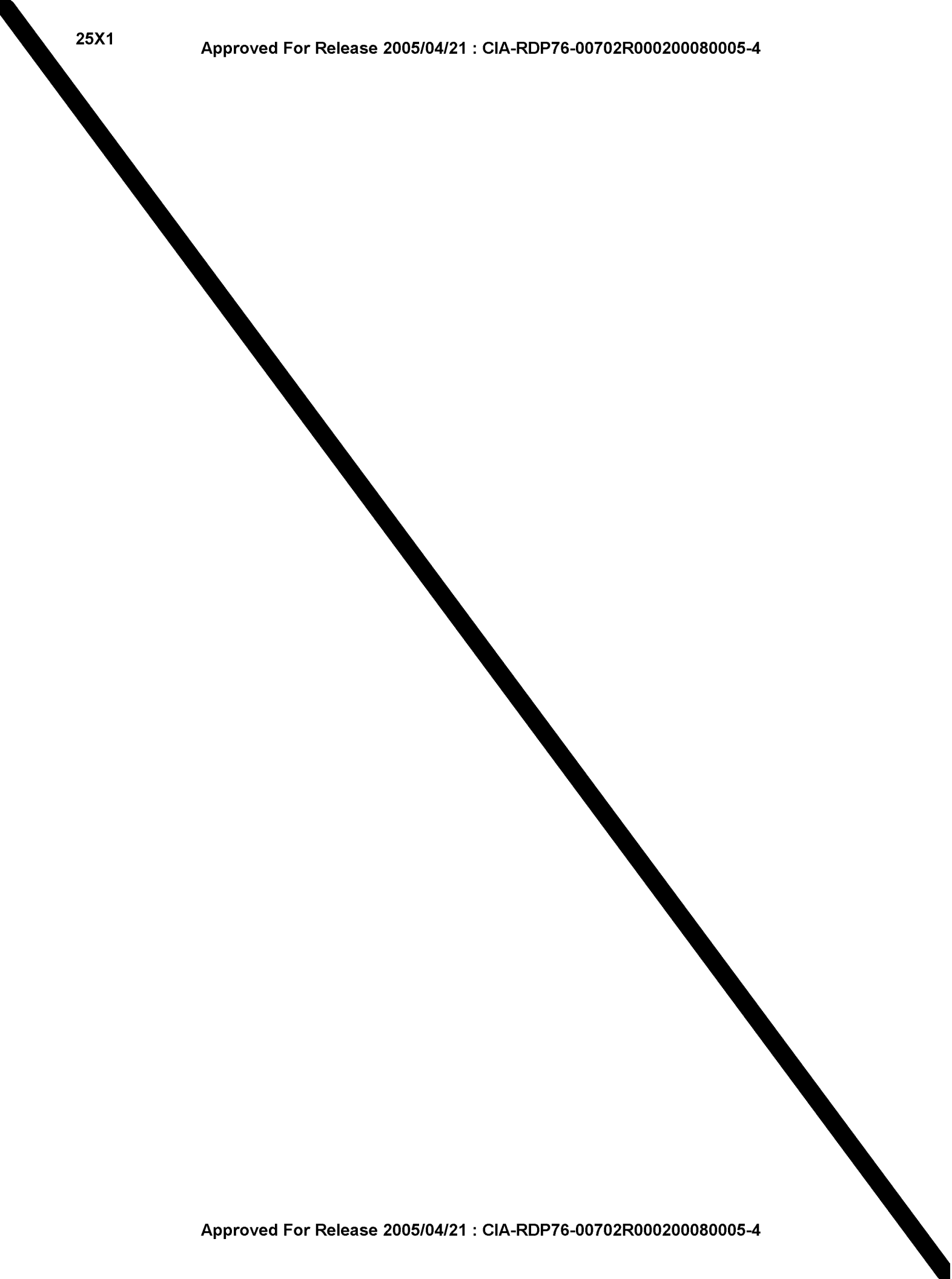
For the last several weeks, the recorder has been returning imagery with high error counts or noise that has prevented ground processing equipment from producing usable pictures.

Prior to the most recent problems controllers had been using about 12 min. worth of the recorder's 30-min. tape capability to store pictures over areas out of ground station range.

The tape was divided into two 6-min. segments that were used separately to provide a margin of redundancy.

Some engineering exercises are being conducted to see if the tape recorder can be used again, but there is little hope a solution to its problems will be found.

"We've done other corrections in the past, but I think we're just kicking the corpse now," Winchester said.



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